

**Remarks**

Claims 23 and 24 have been canceled. Claim 1 has been amended to specify that the formulation provides delayed or extended release of milnacipran to produce a therapeutic effect over approximately 24 hours when administered to a patient in need, with diminished incidence or reduced intensity relative to one or more immediate release milnacipran side effects. Support for the amendment is found at least in the abstract. Claim 3 has been amended to correct the spelling of milnacipran. Support for the amendment is found throughout the specification and claims, as originally filed.

**Rejection Under 35 U.S.C. § 102**

Claims 1-24 were rejected under 35 U.S.C. § 102(f) as being unpatentable over copending application U.S.S.N. 10/690,947. Applicants respectfully traverse this rejection.

Analysis

Claims 23 and 24 have been canceled. Claim 1 has been amended to specify that the formulation that provides delayed or extended release of milnacipran to produce a therapeutic effect over approximately 24 hours when administered to a patient in need, with diminished incidence or reduced intensity relative to one or more immediate release milnacipran side effects.

Applicants are submitting a Petition to Correct Inventorship in the present application in order to add Srinivas G. Rao as an inventor. Dr. Rao is assigning his interest in the present application to Cypress Bioscience, Inc. As a result, the present application and U.S.S.N. 10/690,947 will have identity of inventorship and identity of ownership. Accordingly, the Examiner's rejection under 35 U.S.C. § 102(f) is no longer applicable.

### **Double Patenting Rejection**

Claims 1-24 were provisionally rejected under 35 U.S.C. § 101 for alleging claiming the same invention as claims 1-24 of copending Application No. 10/690,947. Applicants respectfully traverse this rejection to the extent it applied to the claims as amended.

Claims 23 and 24 have been canceled. These claims will be pursued in copending Application No. 10/690,947. Claims 1-22 in U.S.S.N. 10/690,947 will be canceled.

As noted above, Applicants are submitting in a Petition to Correct Inventorship in the present application in order to add Srinivas G. Rao as an inventor. Dr. Rao is assigning his interest in the present application to Cypress Bioscience, Inc. As a result, the present application and U.S.S.N. 10/690,947 will have identity of inventorship and identity of ownership. Accordingly, the Examiner's rejection under 35 U.S.C. § 101 is no longer applicable.

U.S.S.N. 10/690,947  
Filed: October 22, 2003  
**AMENDMENT AND RESPONSE TO OFFICE ACTION**

Allowance of claims 1-22, as amended, is respectfully solicited.

Respectfully submitted,

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